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**Introduced by Senator Hollingsworth**

February 7, 2006

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An act to amend Section 12076 of the Penal Code, relating to firearms.

LEGISLATIVE COUNSEL'S DIGEST

SB 1239, as introduced, Hollingsworth. Firearms: transactions.

Existing law generally regulates the transfer of firearms, including various documents to be completed in connection therewith. Existing law provides for a register that contains personal identifying information regarding the seller and purchaser of the firearm. A copy of that document is available to the purchaser upon request from the firearms dealer.

This bill would require firearms dealers to redact personal information regarding the firearm seller from the document prior to providing a copy to the purchaser.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 12076 of the Penal Code is amended to
- 2 read:
- 3 12076. (a) (1) Before January 1, 1998, the Department of
- 4 Justice shall determine the method by which a dealer shall submit
- 5 firearm purchaser information to the department and the
- 6 information shall be in one of the following formats:
- 7 (A) Submission of the register described in Section 12077.
- 8 (B) Electronic or telephonic transfer of the information
- 9 contained in the register described in Section 12077.

1 (2) On or after January 1, 1998, electronic or telephonic  
2 transfer, including voice or facsimile transmission, shall be the  
3 exclusive means by which purchaser information is transmitted  
4 to the department.

5 (3) On or after January 1, 2003, except as permitted by the  
6 department, electronic transfer shall be the exclusive means by  
7 which information is transmitted to the department. Telephonic  
8 transfer shall not be permitted for information regarding sales of  
9 any firearms.

10 (b) (1) Where the register is used, the purchaser of any  
11 firearm shall be required to present clear evidence of his or her  
12 identity and age, as defined in Section 12071, to the dealer, and  
13 the dealer shall require him or her to sign his or her current legal  
14 name and affix his or her residence address and date of birth to  
15 the register in quadruplicate. The salesperson shall affix his or  
16 her signature to the register in quadruplicate as a witness to the  
17 signature and identification of the purchaser. Any person  
18 furnishing a fictitious name or address or knowingly furnishing  
19 any incorrect information or knowingly omitting any information  
20 required to be provided for the register and any person violating  
21 any provision of this section is guilty of a misdemeanor.

22 (2) The original of the register shall be retained by the dealer  
23 in consecutive order. Each book of 50 originals shall become the  
24 permanent register of transactions that shall be retained for not  
25 less than three years from the date of the last transaction and  
26 shall be available for the inspection of any peace officer,  
27 Department of Justice employee designated by the Attorney  
28 General, or agent of the federal Bureau of Alcohol, Tobacco,  
29 Firearms, and Explosives upon the presentation of proper  
30 identification, but no information shall be compiled therefrom  
31 regarding the purchasers or other transferees of firearms that are  
32 not pistols, revolvers, or other firearms capable of being  
33 concealed upon the person.

34 (3) Two copies of the original sheet of the register, on the date  
35 of the application to purchase, shall be placed in the mail,  
36 postage prepaid, and properly addressed to the Department of  
37 Justice in Sacramento.

38 (4) If requested, a photocopy of the original shall be provided  
39 to the purchaser by the dealer, *provided however, that the*

1 *personal information of the seller shall be redacted from the*  
2 *copy by the dealer prior to delivery to the purchaser.*

3 (5) If the transaction is one conducted pursuant to Section  
4 12082, a photocopy of the original shall be provided to the seller  
5 by the dealer, upon request.

6 (c) (1) Where the electronic or telephonic transfer of applicant  
7 information is used, the purchaser shall be required to present  
8 clear evidence of his or her identity and age, as defined in  
9 Section 12071, to the dealer, and the dealer shall require him or  
10 her to sign his or her current legal name to the record of  
11 electronic or telephonic transfer. The salesperson shall affix his  
12 or her signature to the record of electronic or telephonic transfer  
13 as a witness to the signature and identification of the purchaser.  
14 Any person furnishing a fictitious name or address or knowingly  
15 furnishing any incorrect information or knowingly omitting any  
16 information required to be provided for the electronic or  
17 telephonic transfer and any person violating any provision of this  
18 section is guilty of a misdemeanor.

19 (2) The record of applicant information shall be transmitted to  
20 the Department of Justice in Sacramento by electronic or  
21 telephonic transfer on the date of the application to purchase.

22 (3) The original of each record of electronic or telephonic  
23 transfer shall be retained by the dealer in consecutive order. Each  
24 original shall become the permanent record of the transaction that  
25 shall be retained for not less than three years from the date of the  
26 last transaction and shall be provided for the inspection of any  
27 peace officer, Department of Justice employee designated by the  
28 Attorney General, or agent of the federal Bureau of Alcohol,  
29 Tobacco, Firearms, and Explosives upon the presentation of  
30 proper identification, but no information shall be compiled  
31 therefrom regarding the purchasers or other transferees of  
32 firearms that are not pistols, revolvers, or other firearms capable  
33 of being concealed upon the person.

34 (4) If requested, a copy of the record of electronic or  
35 telephonic transfer shall be provided to the purchaser by the  
36 dealer.

37 (5) If the transaction is one conducted pursuant to Section  
38 12082, a copy shall be provided to the seller by the dealer, upon  
39 request.

(d) (1) The department shall examine its records, as well as those records that it is authorized to request from the State Department of Mental Health pursuant to Section 8104 of the Welfare and Institutions Code, in order to determine if the purchaser is a person described in Section 12021, 12021.1, or subparagraph (A) of paragraph (9) of subdivision (a) of Section 12072 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(2) To the extent that funding is available, the Department of Justice may participate in the National Instant Criminal Background Check System (NICS), as described in subsection (t) of Section 922 of Title 18 of the United States Code, and, if that participation is implemented, shall notify the dealer and the chief of the police department of the city or city and county in which the sale was made, or if the sale was made in a district in which there is no municipal police department, the sheriff of the county in which the sale was made, that the purchaser is a person prohibited from acquiring a firearm under federal law.

(3) If the department determines that the purchaser is a person described in Section 12021, 12021.1, or subparagraph (A) of paragraph (9) of subdivision (a) of Section 12072 of this code or Section 8100 or 8103 of the Welfare and Institutions Code, it shall immediately notify the dealer and the chief of the police department of the city or city and county in which the sale was made, or if the sale was made in a district in which there is no municipal police department, the sheriff of the county in which the sale was made, of that fact.

(4) If the department determines that the copies of the register submitted to it pursuant to paragraph (3) of subdivision (b) contain any blank spaces or inaccurate, illegible, or incomplete information, preventing identification of the purchaser or the pistol, revolver, or other firearm to be purchased, or if any fee required pursuant to subdivision (e) is not submitted by the dealer in conjunction with submission of copies of the register, the department may notify the dealer of that fact. Upon notification by the department, the dealer shall submit corrected copies of the register to the department, or shall submit any fee required pursuant to subdivision (e), or both, as appropriate and, if notification by the department is received by the dealer at any time prior to delivery of the firearm to be purchased, the dealer

1 shall withhold delivery until the conclusion of the waiting period  
2 described in Sections 12071 and 12072.

3 (5) If the department determines that the information  
4 transmitted to it pursuant to subdivision (c) contains inaccurate or  
5 incomplete information preventing identification of the purchaser  
6 or the pistol, revolver, or other firearm capable of being  
7 concealed upon the person to be purchased, or if the fee required  
8 pursuant to subdivision (e) is not transmitted by the dealer in  
9 conjunction with transmission of the electronic or telephonic  
10 record, the department may notify the dealer of that fact. Upon  
11 notification by the department, the dealer shall transmit  
12 corrections to the record of electronic or telephonic transfer to  
13 the department, or shall transmit any fee required pursuant to  
14 subdivision (e), or both, as appropriate, and if notification by the  
15 department is received by the dealer at any time prior to delivery  
16 of the firearm to be purchased, the dealer shall withhold delivery  
17 until the conclusion of the waiting period described in Sections  
18 12071 and 12072.

19 (e) The Department of Justice may require the dealer to charge  
20 each firearm purchaser a fee not to exceed fourteen dollars (\$14),  
21 except that the fee may be increased at a rate not to exceed any  
22 increase in the California Consumer Price Index as compiled and  
23 reported by the California Department of Industrial Relations.  
24 The fee shall be no more than is necessary to fund the following:

25 (1) (A) The department for the cost of furnishing this  
26 information.

27 (B) The department for the cost of meeting its obligations  
28 under paragraph (2) of subdivision (b) of Section 8100 of the  
29 Welfare and Institutions Code.

30 (2) Local mental health facilities for state-mandated local costs  
31 resulting from the reporting requirements imposed by Section  
32 8103 of the Welfare and Institutions Code.

33 (3) The State Department of Mental Health for the costs  
34 resulting from the requirements imposed by Section 8104 of the  
35 Welfare and Institutions Code.

36 (4) Local mental hospitals, sanitariums, and institutions for  
37 state-mandated local costs resulting from the reporting  
38 requirements imposed by Section 8105 of the Welfare and  
39 Institutions Code.

1 (5) Local law enforcement agencies for state-mandated local  
2 costs resulting from the notification requirements set forth in  
3 subdivision (a) of Section 6385 of the Family Code.

4 (6) Local law enforcement agencies for state-mandated local  
5 costs resulting from the notification requirements set forth in  
6 subdivision (c) of Section 8105 of the Welfare and Institutions  
7 Code.

8 (7) For the actual costs associated with the electronic or  
9 telephonic transfer of information pursuant to subdivision (c).

10 (8) The Department of Food and Agriculture for the costs  
11 resulting from the notification provisions set forth in Section  
12 5343.5 of the Food and Agricultural Code.

13 (9) The department for the costs associated with subparagraph  
14 (D) of paragraph (2) of subdivision (f) of Section 12072.

15 (10) The department for the costs associated with funding  
16 Department of Justice firearms-related regulatory and  
17 enforcement activities related to the sale, purchase, loan, or  
18 transfer of firearms pursuant to this chapter.

19 The fee established pursuant to this subdivision shall not  
20 exceed the sum of the actual processing costs of the department,  
21 the estimated reasonable costs of the local mental health facilities  
22 for complying with the reporting requirements imposed by  
23 paragraph (2) of this subdivision, the costs of the State  
24 Department of Mental Health for complying with the  
25 requirements imposed by paragraph (3) of this subdivision, the  
26 estimated reasonable costs of local mental hospitals, sanitariums,  
27 and institutions for complying with the reporting requirements  
28 imposed by paragraph (4) of this subdivision, the estimated  
29 reasonable costs of local law enforcement agencies for  
30 complying with the notification requirements set forth in  
31 subdivision (a) of Section 6385 of the Family Code, the  
32 estimated reasonable costs of local law enforcement agencies for  
33 complying with the notification requirements set forth in  
34 subdivision (c) of Section 8105 of the Welfare and Institutions  
35 Code imposed by paragraph (6) of this subdivision, the estimated  
36 reasonable costs of the Department of Food and Agriculture for  
37 the costs resulting from the notification provisions set forth in  
38 Section 5343.5 of the Food and Agricultural Code, the estimated  
39 reasonable costs of the department for the costs associated with  
40 subparagraph (D) of paragraph (2) of subdivision (f) of Section

1 12072, and the estimated reasonable costs of department  
2 firearms-related regulatory and enforcement activities related to  
3 the sale, purchase, loan, or transfer of firearms pursuant to this  
4 chapter.

5 (f) (1) The Department of Justice may charge a fee sufficient  
6 to reimburse it for each of the following but not to exceed  
7 fourteen dollars (\$14), except that the fee may be increased at a  
8 rate not to exceed any increase in the California Consumer Price  
9 Index as compiled and reported by the California Department of  
10 Industrial Relations:

11 (A) For the actual costs associated with the preparation, sale,  
12 processing, and filing of forms or reports required or utilized  
13 pursuant to Section 12078.

14 (B) For the actual processing costs associated with the  
15 submission of a Dealers' Record of Sale to the department.

16 (C) For the actual costs associated with the preparation, sale,  
17 processing, and filing of reports utilized pursuant to subdivision  
18 (l) of Section 12078 or paragraph (18) of subdivision (b) of  
19 Section 12071, or clause (i) of subparagraph (A) of paragraph (2)  
20 of subdivision (f) of Section 12072, or paragraph (3) of  
21 subdivision (f) of Section 12072.

22 (D) For the actual costs associated with the electronic or  
23 telephonic transfer of information pursuant to subdivision (c).

24 (2) If the department charges a fee pursuant to subparagraph  
25 (B) of paragraph (1) of this subdivision, it shall be charged in the  
26 same amount to all categories of transaction that are within that  
27 subparagraph.

28 (3) Any costs incurred by the Department of Justice to  
29 implement this subdivision shall be reimbursed from fees  
30 collected and charged pursuant to this subdivision. No fees shall  
31 be charged to the dealer pursuant to subdivision (e) for  
32 implementing this subdivision.

33 (g) All money received by the department pursuant to this  
34 section shall be deposited in the Dealers' Record of Sale Special  
35 Account of the General Fund, which is hereby created, to be  
36 available, upon appropriation by the Legislature, for expenditure  
37 by the department to offset the costs incurred pursuant to this  
38 section, paragraph (1) and subparagraph (D) of paragraph (2) of  
39 subdivision (f) of Section 12072, Sections 12083 and 12099,

1 subdivision (c) of Section 12131, Sections 12234, 12289, and  
2 12289.5, and subdivisions (f) and (g) of Section 12305.

3 (h) Where the electronic or telephonic transfer of applicant  
4 information is used, the department shall establish a system to be  
5 used for the submission of the fees described in subdivision (e) to  
6 the department.

7 (i) (1) Only one fee shall be charged pursuant to this section  
8 for a single transaction on the same date for the sale of any  
9 number of firearms that are not pistols, revolvers, or other  
10 firearms capable of being concealed upon the person or for the  
11 taking of possession of those firearms.

12 (2) In a single transaction on the same date for the delivery of  
13 any number of firearms that are pistols, revolvers, or other  
14 firearms capable of being concealed upon the person, the  
15 department shall charge a reduced fee pursuant to this section for  
16 the second and subsequent firearms that are part of that  
17 transaction.

18 (j) Only one fee shall be charged pursuant to this section for a  
19 single transaction on the same date for taking title or possession  
20 of any number of firearms pursuant to paragraph (18) of  
21 subdivision (b) of Section 12071 or subdivision (c) or (i) of  
22 Section 12078.

23 (k) Whenever the Department of Justice acts pursuant to this  
24 section as it pertains to firearms other than pistols, revolvers, or  
25 other firearms capable of being concealed upon the person, the  
26 department's acts or omissions shall be deemed to be  
27 discretionary within the meaning of the California Tort Claims  
28 Act pursuant to Division 3.6 (commencing with Section 810) of  
29 Title 1 of the Government Code.

30 (l) As used in this section, the following definitions apply:

31 (1) "Purchaser" means the purchaser or transferee of a firearm  
32 or a person being loaned a firearm.

33 (2) "Purchase" means the purchase, loan, or transfer of a  
34 firearm.

35 (3) "Sale" means the sale, loan, or transfer of a firearm.

36 (4) "Seller" means, if the transaction is being conducted  
37 pursuant to Section 12082, the person selling, loaning, or  
38 transferring the firearm.

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